

No. 13,258

IN THE
United States
Court of Appeals
For the Ninth Circuit

CLAUDE E. SPRIGGS,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

Appellant's Opening Brief

Appeal from the United States District Court
for the District of Arizona

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FILED

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO

MAY 20 1952

PAUL P. O'BRIEN
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JURISDICTIONAL MATTERS

In the United States District Court for the District of Arizona, Honorable Peirson M. Hall, United States District Judge, specially assigned, presiding, the appellant Claude E. Spriggs, was on the 19th day of November, 1951, adjudged guilty of the offense of violating Title 26, United States Code, Paragraph 145(b) (attempt to defeat

and evade income tax) upon Count III of the Indictment (T.R. 22-23); and thereafter, and on the 21st day of November, 1951, the appellant filed his notice of appeal to this Court (T.R. 24) from the judgment of conviction entered on November 19, 1951, and from the order denying his motion for judgment of acquittal notwithstanding the verdict entered on November 19, 1951, and from the order denying motion for new trial denied November 19, 1951 (T.R. 24), and from the judgment and sentencing made and entered herein on November 19, 1951, and from the whole thereof (T.R. 24).

The District Court has jurisdiction under Title 26, United States Code, Paragraph 145(b) (attempt to defeat and evade income tax); this court has jurisdiction under Title 28, United States Code, Paragraph 1291.

STATEMENT OF FACTS

The appellant herein was indicted on three Counts (T.R. 3, 4 and 5). In due time appellant moved for and received a Bill of Particulars concerning each Count of said Indictment (T.R. 5, 6, 7 and 8). Thereafter, on June 18, 1951, appellant entered a plea of not guilty (T.R. 9) and the cause was set for trial on the 13th day of November, 1951 (T.R. 9); and the same proceeded to trial on the 14th day of November, 1951 (T.R. 9), and upon trial the defendant was acquitted of Counts I and II of said Indictment, upon his motion for a directed verdict of acquittal (T.R. 165) and (T.R. 172) and upon portions of Count III relating to the items set forth in (a) and (b) in the Government's response for a Bill of Particulars (T.R. 8) and (T.R. 172-173); leaving only for consideration of the jury (T.R. 176) the allegations contained in the Government's

response to defendants' motion for a Bill of Particulars, the item consisting of:

“Depreciation overstated:

This item consists of the overstatement of depreciation by the defendant as the result of his having falsely represented the cost of his property located on Henshaw Road, Phoenix, Arizona, on which he claimed excessive depreciation in the amount of.....\$2,978.60”
(T.R. 8)

to support Count III of the Indictment herein (T.R. 4-5). At the close of the evidence, presented by the Government, the defendant moved for judgment of acquittal as to Count III in the Indictment, upon the ground and for the reasons that the evidence adduced did not sustain the allegations of said Count III of said Indictment (T.R. 172) which said motion, after being granted as to items A and B (T.R. 172-173), as heretofore set out, was denied as to Count III of the Indictment as to the matter set out in “Depreciation overstated” as shown in the Government’s response to defendant’s motion for a Bill of Particulars (T.R. 8 and 174). The cause was submitted to the jury, and the Jury thereafter returned a verdict of guilty as to Count III (T.R. 18-19). In due time, appellant filed his Motion for Judgment of Acquittal Notwithstanding the Verdict (T.R. 19) and his Motion for a New Trial (T.R. 20); both were denied by the Court on November 19, 1951 (T.R. 21). The appellant was, on November 19, 1951, adjudged guilty of the offense of violating Title 26, Section 145(b) United States Code (attempt to defeat and evade income tax), as alleged in Count III of the Indictment, and was thereafter sentenced therefor (T.R. 22-23).

The Government's case and evidence thereon rested solely on the testimony of two Internal Revenue Agents, to-wit: Arthur R. Beals and Lloyd M. Tucker. No other evidence or exhibits were adduced before the jury with the exception of appellant's income tax return for the year in question, to-wit: 1947 (T.R. 10). Testimony of the said agents concerning the allegations as covered by the Government's Bill of Particulars as to Count III, consisted solely of the following (T.R. 8)

Depreciation overstated:

"This item consists of the overstatement of depreciation by the defendant as the result of his having falsely represented the cost of his property located on Henshaw Road, Phoenix, Arizona, on which he claimed excessive depreciation in the amount of.....\$2,978.60"

which was derived solely from admissions, conversations and statements with the appellant (concerning the so-called Henshaw Road property) (T.R. 50-72 and 83-144). (It will be noted that much of this evidence was to Counts of Indictments dismissed by the lower courts, leaving only for consideration by the jury the item of "Depreciation overstated" as herein set forth by the Government's Bill of Particulars in Count III of the Indictment (T.R. 176).

The witness Beals testified relating to the Henshaw Road property as follows (T.R. 93):

"The Court: Well, did you have any discussions with him concerning the depreciation on the Henshaw Road Property?

A. Yes sir.

Q. When and where, and who was present?

A. At this same time.

Q. All right, what was said?"

The witness then related conversations with the appellant supposedly concerning Count III of the Indictment for some thirty pages of the Transcript of Record (T.R. 93-120).

As to the fact that the Government's evidence consisted solely upon admission and statements of the appellant, we refer to the following:

"Q. (By Mr. Choisser): Now, anything else that you know of that makes up that item of property, that I haven't asked you about?

A. No, I don't—I didn't actually go into these buildings. I took Mr. Spriggs' * * *" (T.R. 120).

Question by Mr. Thurman (T.R. 120):

"Q. Do you know what was on that property in any of those years I have mentioned, of your own knowledge?

A. No, I do not."

The other Government witness, Lloyd M. Tucker, testified solely to conversations with the appellant (T.R. 121-144) and during this testimony Government Exhibit 33 (T.R. 129) and Government Exhibit 34 (T.R. 140) were marked in evidence, which were written reports of conversations had with the defendant subsequent to the date laid in the Indictment.

The Government attempted to prove income by certain net worth statements which were introduced in evidence as Government Exhibits 29, 30, 31 and 32 (T.R. 110) *but were subsequently rejected as competent evidence* by the Court and ordered removed from the evidence by the Court thereupon sustaining an objection to said Government Exhibits 29, 30, 31 and 32 (T.R. 115, 116), and thereby removing them from consideration by the jury.

The relating of statements, admissions and conversations with the appellant by these agents was raised by the appellant by the following objections (T.R. 124) :

“* * * For the record, may we interpose the objection that there has been no showing of any crime having been committed, no connection with the defendant therewith, and therefore any statement or admission or whatever he might have said is not admissible at this time. There has been no corpus delicti, proved, there has been no connection of the defendant with it, therefore, his statements are inadmissible at this time until that is shown.”

which objection was overruled by the Court (T.R. 125).

There being no other evidence adduced except as to these conversations, statements and admissions between witness and appellant before the Court as to the aforementioned item of depreciation as relating to Count III of the Indictment, the cause was thereupon submitted to the Jury.

ISSUE INVOLVED

The issue involved on this appeal relating to items of Depreciation as set forth in the Government's Bill of Particulars, as supporting Count III of the Indictment is (1) Is the evidence sufficient to sustain the verdict and judgment? This was raised by appellant's objection to the evidence (T.R. 124), appellant's motion for judgment of acquittal as to Count III of the Indictment (T.R. 172 and 177) and by motion for Judgment of Acquittal Notwithstanding the Verdict (T.R. 19).

SPECIFICATIONS OF ERROR

I.

The District Court erred in admitting the testimony over the objection of appellant (T.R. 124) of such witnesses' testimony of related conversations, admissions and statements, for this testimony was inadmissible for the reason there had been no showing of any crime having been committed (T.R. 124): "There has been no corpus delicti proved, there has been no connection of the defendant with it, therefore, his statements are inadmissible at this time until that is shown."

II.

The District Court erred in refusing to grant appellant's motion for judgment of acquittal at the end of the Government's case (T.R. 174) and at the end of all of the evidence adduced before the Jury (T.R. 177); upon the ground that the evidence was insufficient to sustain a conviction.

III.

The District Court erred in refusing to grant appellant's motion for judgment of acquittal notwithstanding the verdict (T.R. 21) upon the ground that the evidence was insufficient to sustain the verdict.

IV.

The District Court erred in refusing to grant appellant's motion for a new trial (T.R. 21) upon the ground that the evidence was insufficient to sustain a conviction.

ARGUMENT

I.

The District Court erred in admitting the testimony over the objections of appellant, of Government agents' related conversations, admissions and statements, for the reason said testimony was inadmissible upon the ground there had been no showing of any crime having been committed.

A. An extrajudicial confession will not be admitted unless corroborated by other evidence. In the case of *Tabor v. U. S.*, 152 F.(2) 254, the Court said:

“* * * it may be said that the rule in this country, in all federal courts which have considered the question, has universally been that an extrajudicial confession will not be admitted unless corroborated by other evidence. The cases differ widely as to the extent of such evidence required and rules on this point have been variously stated. In most cases, it has been required that the evidence concern the corpus delicti and some cases require that it touch every element thereof, but the diversity of these cases does not lend itself to the statement of any general rule. Only a few cases have allowed such confessions to be admitted where the extraneous proof did not definitely touch the corpus delicti and these cases may be considered somewhat ambiguous under their special facts.

There was no corroborated evidence in the present case that would justify the admission of the confession under any of the rules laid down by the various courts and the trial judge should have granted the motion for a directed verdict on the indictment. * * *”

From a careful review of the testimony adduced in this case it shows conclusively that the entire Government's

evidence was predicated upon the two Government Agents relating alleged confessions; admission and conversations with the appellant and no other evidence was adduced before the jury, by the Government in support of the allegations of Count III of the Indictment, as further limited and set forth in the Government's Bill of Particulars.

II.

A. The District Court erred in refusing to grant appellant's motion for judgment of acquittal at the end of the Government's case, and at the end of all of the evidence adduced before the Jury; upon the ground that the evidence was insufficient to sustain a conviction.

B. The District Court erred in refusing to grant appellant's motion for judgment of acquittal notwithstanding the verdict upon the ground that the evidence was insufficient to sustain the verdict.

C. The District Court erred in refusing to grant appellant's motion for a new trial upon the ground that the evidence was insufficient to sustain a conviction.

(In order to save space the following argument pertains to the assignments of error, A, B, C, above.)

The evidence is not sufficient to support a verdict and judgment of guilty of violation of Title 26, United States Code, 145(b) (attempt to defeat and evade income tax) in the sum of \$1,058.03, as charged in Count III of the Indictment herein and as limited to "Depreciation overstated" (T.R. 8) (\$2,978.60) as contained in the Government's Bill of Particulars.

A careful examination of the transcript will reveal no evidence whatsoever by any competent testimony or other

evidence of any income whatsoever received by the appellant for the calendar year 1947, as alleged in Count III of the Indictment herein.

The Government relied solely upon statements of the appellant as to depreciation taken upon the property in question, to-wit: that property known as the Henshaw Road property, and as set forth in the Government's Bill of Particulars and which was the remaining issue in the trial below, and for consideration before this Court on appeal. The Government attempted to prove by financial statements the income of the appellant (T.R. 110) but the Court withdrew these statements from the evidence (T.R. 116) leaving nothing in evidence before the Court and Jury except the statements of the appellant herein, uncorroborated in any manner whatsoever and which is insufficient to sustain a conviction.

A universal and existing rule is that one may not be convicted of a crime upon his uncorroborated extrajudicial confession. *Forte v. U. S.*, 127 A.L.R. 1120, and all Annotations thereunder.

To sustain a conviction there must be some evidence of corpus delicti independent of alleged extrajudicial confession and admissions of defendant.

The rule in this country in all Federal Courts which have considered the question, have been universally held that all extrajudicial confession will not be admitted unless corroborated by other evidence, *Tabor v. U. S.*, 152 Fed.(2) 254, and the same argument precisely obtains in the present case which can be quoted from the case above:

“There was no corroborated evidence in the present case that would justify the admission of the confession under any of the rules laid down by the various courts

and the trial judge should have granted the motion for a directed verdict on the indictment * * *”

In reversing this case the appellate Court declared:

“There was no sufficient independent evidence in either case to corroborate the confession. In view of our conclusions as to the failure of proof to corroborate the confession it is not necessary to consider the question raised as to whether the confession was obtained under duress.”

There was not sufficient evidence in either of these cases to sustain a conviction which is the exact grounds relied upon by appellant in the instant case. The same rule is adhered to in *U. S. v. Yost*, 157 Fed.(2) 147.

In the consideration of an income tax evasion case dealing with the insufficiency of evidence to sustain the conviction the Court said:

“In such a situation we must keep in mind that the conviction can not stand unless there is proof of the corpus delicti, existence of which can not be presumed or established by an extrajudicial admission. The government must, by competent evidence, prove beyond reasonable doubt that the crime charged has actually been committed. *Pines v. United States*, 8 Cir., 123 F. 2d 825, 829; *Forte v. United States*, 68 App. D.C. 111, 94 F.2d 236, 243, 127 A.L.R. 1120; *Gordnier v. United States*, 9 Cir., 261 F. 910, 912; *United States v. Chapman*, 7 Cir., 168 F.2d 997 at page 1001. In the latter case we said: ‘Appellant contends that, “In a ‘net worth case,’ the starting point must be based upon a solid foundation and a Revenue Agent’s statement of the defendant’s oral admission or confession when uncorroborated is not sufficient to convict.” We fully agree with his statement of the law.’ In other words

to justify the conviction, there must be proof beyond reasonable doubt and exclusive of any express or implied extrajudicial admission by defendant that defendant evaded some income tax. *Gleckman v. United States*, 8 Cir., 80 F.2d 394, 399; *United States v. Miro*, 2 Cir., 60 F.2d 58, 61; *O'Brien v. United States*, 7 Cir., 51 F.2d 193, 196." * * *

United States v. Fenwick, 177 F.2d 448.

The Court in *Bryan v. U. S.*, 175 F.(2) 223, laid down the following rule:

"The net worth-expenditures method of establishing net income, sought to be applied in this case, is effective only if the computations of net worth at the beginning and at the end of the questioned periods can reasonably be accepted as accurate."

and since none was introduced or presented by the Government in the instant case, it follows that under the evidence herein a conviction cannot be allowed to stand against appellant.

In *Tabor v. U. S.*, 152 Fed.(2) 254, the Court in that case laid down the rule that:

"The necessity for independent corroboration of a confession, of the character of the one here or as to the admissions made after the crime, is clearly recognized by the Supreme Court of the United States in the case of *Warszower v. United States*, 312 U.S. 342, 61 S.Ct. 603, 85 L.Ed. 876."

The Court further said in the *Tabor* case:

"* * * Aside from the confession, there is no evidence that defendant ever knew, met or saw Ruby or had any connection with him. It is not even shown that Ruby was at the Induction center on the day defend-

ant was examined. 'A conviction of conspiracy may not be sustained solely on an admission, or confession, of the accused unless such admission or confession is corroborated by independent evidence of the corpus delicti'."

The Court in the case of *Yost v. United States*, 157 Fed. (2d) 147, on page 150 stated:

"For nothing is better established than that there can be no conviction of an accused in a criminal case upon an uncorroborated confession, and certainly the corroboration in this case, given its broadest import, wholly fails to include any substantial evidence of the corpus delicti. If in this case there were independently of the confession, substantial evidence of the corpus delicti, or if it were shown that such evidence and the confession were together convincing beyond a reasonable doubt, the verdict of the jury and the judgment of the court below would have to stand. But in the present case, exclusive of the 'statement,' there is not a word of effective evidence, direct or circumstantial, from which any jury could properly conclude that there was an unlawful combination, confederacy, agreement or conspiracy between appellant and Ruby to cause appellant's rejection when he answered the call for induction into the military service."

These holdings were again made in *Forte v. U. S.*, 127 A.L.R. 1120, and in the extensive annotations thereto, where it was expressly held one cannot be convicted of a crime upon his uncorroborated extrajudicial confession.

Further sustaining the law as outlined heretofore the District Court of the United States, Atlanta Division, in the case of *United States v. Berman*, 75 Fed. Supp. 789, observes the following:

“In the prosecution for fraudulent evasion of income tax the Government was required to prove beyond a reasonable doubt items which it claimed were properly chargeable to income constituted taxable income and that failure to return them was willful.”

The Court further found that each case must rest upon the *actual facts*, and that without competent evidence to sustain the verdict a motion for judgment of acquittal should have been granted and that the burden rested upon the Government to prove that items charged to the defendant were in fact taxable income and must be shown by competent evidence to be such.

In consideration of all the evidence presented to the trial court, as revealed by the transcript, and the law as applicable thereto, and presented herein, it therefore follows that appellants' conviction cannot stand under the state of the evidence adduced, and the law pertaining to the subject.

It must therefore be concluded there was no competent evidence upon which the Jury could find the appellant guilty of an attempt to defeat and evade income tax as alleged in Count III of the Indictment herein.

CONCLUSION

It is respectfully submitted, in view of the foregoing, that this Honorable Court should reverse the judgment of the District Court and order appellant's motion for judgment of acquittal of Count III granted, or in the alternative order that a new trial be granted.

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